
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Livio Ricciulli

Attorney Docket No.: DILDP001C3

Application No.: To Be Assigned

Examiner: To Be Assigned

Filed: Herewith

Group: To Be Assigned

Title: ON-DEMAND OVERLAY ROUTING FOR
COMPUTER-BASED
COMMUNICATIONS

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EV332828508US to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 30, 2003.

Signed: _____


Ryan Eachus

PETITION TO MAKE SPECIAL UNDER 37 CFR 1.102
ACTUAL INFRINGEMENT

Mail Stop Patent Application
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

This Petition is made under 37 C.F.R. 1.102 to advance the examination of the above noted application due to actual infringement. MPEP 708.02(II).

The above noted application is a continuation of parent Application No. 09/916,628 "On-Demand Overlay Routing for Computer-Based Communication Networks filed July 27, 2001 which claims priority from U.S. Patent Application No. 09/886,966 "On-Demand Overlay Routing for Computer-Based Communication Networks filed June 25, 2001, now U.S. Patent No. 6,473,405 issued October 29, 2002 which claims priority from U.S. Patent Application No. 09/336,487 for On-Demand Overlay Routing for Computer-Based Communication Networks filed June 18, 1999, now U.S. Patent No. 6,275,470 issued August 14, 2001 from which priority under 35 U.S.C. § 120 is claimed. A preliminary amendment has been filed concurrently with this Petition. With the claim changes in the concurrently filed preliminary amendment, claims in the above noted application are directed at a network server determining an optimal route based at least in part on a first cost of transmission and a second cost of transmission.

Applicant hereby alleges:

(A) That there is an infringing device or product actually on the market and method in use. More specifically, there is technology from Akamai Technologies, Inc. of Cambridge Massachusetts that provides mechanisms for servers to select an optimal path from a default path and one or more alternative paths, the default path determined using one or more existing routing mechanisms. The alleged infringing technology provided by Akamai Technologies of Cambridge, Massachusetts includes:

(1) Akamai's EdgeSuite that is described in MIT 18.996 Topic in TCS: Internet Research Problems by Tom Leighton on February 6, 2002 ("Lecture 1 Notes") and presented as Exhibit B.

(B) That a rigid comparison of the alleged infringing device, product or method with the claims of the present application has been made, and that, in the Applicant's opinion, some of the claims are unquestionably infringed. Applicant believes that at least independent claims 1, 10, 15, 21, and 22 are infringed. A rigid analysis of independent claims 1 and 10 is provided in the claim chart provided in Exhibit A. Quotations in the claim chart were taken from Lecture 1 Notes.

According to information provided in Lecture 1 Notes, Akamai Technologies content delivery package EdgeSuite was launched in 2001 (Section 1.3.2). The June 1999 priority date of the present application precedes the activities of Akamai Technologies.

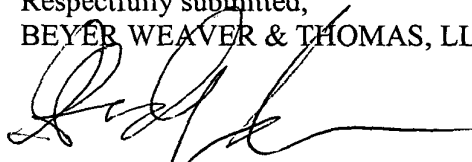
(C) That Applicant has made a careful and thorough search of the prior art and has a good knowledge of the pertinent prior art.

Applicant has knowledge of the relevant prior art analyzed during prosecution of the allowed parent application. It should also be noted that a Petition To Make Special under MPEP 708.02(VIII) (Accelerated Examination) was filed with the parent application. A pre-examination was conducted, references deemed most closely related were submitted, and the references were analyzed in detail. Applicant has also provided a copy of each reference deemed most closely related to the subject matter with the Information Disclosure Statement associated with the continuation as well as the parent application.

The Applicant thus respectfully requests that this Petition to Make Special be granted and that the examination of this Application be advanced in order to expedite the issuance of a patent.

In accordance with 37 C.F.R. 1.102(d), this petition is accompanied by a check for the petition fee. If any other additional fees are required, the Commissioner is authorized to charge such fees to Deposit Account 50-0388 (Order No. DILDP001C3). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,
BEYER WEAVER & THOMAS, LLP

A handwritten signature in black ink, appearing to read 'Godfrey K. Kwan', written over the printed name.

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